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**DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INDUSTRY  
COMMITTEE ON CONSUMER POLICY**

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**OECD WORKSHOP ON DISPUTE RESOLUTION AND REDRESS IN THE GLOBAL  
MARKETPLACE: REPORT OF THE WORKSHOP**

**Held in Washington D.C. on 19-20 April 2005**

**English - Or. English**

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## TABLE OF CONTENTS

OECD WORKSHOP ON DISPUTE RESOLUTION AND REDRESS IN THE GLOBAL MARKETPLACE: REPORT OF THE WORKSHOP .....	3
Main points.....	3
Report of the workshop .....	4
Welcome and introduction.....	4
Keynote speeches .....	5
Session 1: Overview of dispute resolution and redress .....	6
Session 2: Recent developments in the ADR marketplace.....	7
Session 3: Small claims civil court proceedings and other government-run dispute resolution schemes	7
Session 4: Collective claims: consumer plaintiffs and consumer associations.....	8
Session 5: Government facilitated redress.....	9
Session 6: International judicial co-operation in cross-border cases.....	10
Session 7: Break out discussion - case studies .....	11
Session 8: Wrap-up: next steps discussion .....	11
ANNEX I AGENDA .....	14
ANNEX II HYPOTHETICAL CASE STUDIES (FROM SESSION 7).....	22
ANNEX III LIST OF PARTICIPANTS.....	23

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## OECD WORKSHOP ON DISPUTE RESOLUTION AND REDRESS IN THE GLOBAL MARKETPLACE: REPORT OF THE WORKSHOP

On 19-20 April 2005, the OECD held a Workshop on Consumer Dispute Resolution and Redress in the Global Marketplace. The event was organised by the OECD's Committee on Consumer Policy (CCP) and hosted by the US Government at the Federal Trade Commission Conference Center in Washington, D.C. Nobuo Tanaka, OECD Director for Science, Technology and Industry and Tony Sims, Chair of the CCP opened the workshop. Keynote speeches were given by Deborah Platt Majoras, Chairman of the US Federal Trade Commission and Markos Kyprianou, European Union Commissioner for Health and Consumer Protection.

The workshop attracted 129 participants from 24 OECD countries and non-member economies (Argentina, Australia, Belgium, Brazil, Canada, Chile, Chinese Taipei, the Czech Republic, Denmark, France, Germany, Ireland, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Sweden, the United Kingdom, and the United States). Moderators, speakers and panellists included senior government officials, and experts from business, consumer groups and academia.

The aim of the workshop was to enable a better understanding of existing mechanisms for consumer dispute resolution and to consider ways to improve the effectiveness of consumer remedies in cross-border cases.

This document has been prepared by the Secretariat. It includes a list of main points that emerged from the workshop, followed by summaries of each of the eight sessions. The workshop agenda is attached as Annex 1, and the hypothetical case study that served as the basis of the break-out discussions in Session 7 is attached as Annex 2. Presentations delivered at the workshop, the background report, and other workshop materials are available on the OECD Web site at [www.oecd.org/sti/consumer-policy](http://www.oecd.org/sti/consumer-policy).

### Main points

The following key points emerged from the presentations and discussions during the workshop, reflecting in particular the ideas highlighted during the last session's moderated discussion on next steps.

The **importance** of effective dispute resolution and redress mechanisms remains clear. This is particularly true in addressing cross-border complaints, which are on the rise. Such mechanisms can increase consumer satisfaction, encourage good business practices, and promote cross-border commerce, including e-commerce.

There is considerable **diversity** in the approaches taken by different countries, reflecting varied cultural and legal traditions. In most countries a range of different mechanisms can be found, helping to address different types of disputes (individual versus collective; disputes with legitimate businesses versus fraud).

Questions were raised about how best to **fund** dispute resolution and redress mechanisms. Some participants noted a decrease in funding for government assistance to consumers in resolving disputes. Although in some areas marketplace competition has resulted in businesses increasing the level of protections on offer to consumers (*e.g.* payment cards), challenges have been identified in creating incentives for businesses to offer private dispute resolution services to consumers (*e.g.* ADR). One

approach to the funding issue is to include dispute resolution mechanisms as part of a trustmark or other type of self-regulatory scheme.

**Government obtained redress** is an essential tool, especially in cases of cross-border fraud where the legal and practical obstacles to individual action are great. A consensus appears to be emerging about the importance of providing government agencies effective tools in this area.

The **barriers to legal action** in cross-border cases remain, in initiating actions (establishing jurisdiction), obtaining evidence, and enforcing judgments and collecting assets. Apart from private, non-legal mechanisms, such as the payment card system and trustmark programmes, the **enforcement of judicial outcomes** remains problematic in the international arena.

A lack of **consumer understanding and information** about dispute resolution mechanisms has hampered their uptake. Furthermore, evidence suggests that under-privileged consumers are less likely to be aware of their rights or to take (informal or formal legal) action to assert those rights. Consumer advice and referral schemes (*e.g.* ECC-Net and econsumer.gov) can be especially valuable to help consumers identify dispute resolution and redress options in other countries.

There is still room for a greater use of **technology**, especially to facilitate the filing and management of cross-border disputes. There has been significant growth in the online dispute resolution marketplace but there is still considerable scope for improvement. Participants identified only limited use to date of technology in formal legal proceedings.

Efforts to expand **judicial education** about dispute resolution mechanisms could be useful, in particular, to sensitise judges to the needs of foreign consumers that are harmed by domestic “bad actors” and mitigate against inherent advantages possessed by local defendants.

A number of suggestions for **further work** by the OECD Consumer Policy Committee were discussed, including: further collection and joint study of the evidence base for action; development of a framework on the elements of an effective dispute resolution system; work towards an OECD Recommendation directed at member governments in relation to a framework; and increased outreach to non-OECD economies.

## **Report of the workshop**

### ***Welcome and introduction***

**Nobuo Tanaka**, OECD Director for Science, Technology and Industry opened the workshop. He extended a warm welcome to all participants and thanked the US government for offering to host the event. Mr. Tanaka noted that the OECD has long been at work in developing policy frameworks for the digital economy. He highlighted the essential role of dispute resolution and redress in building consumer confidence and realising the promise of the global marketplace. He stressed that unless consumers are confident that disputes can be resolved in an accessible, effective, and fair way they will be reluctant to engage in cross-border transactions.

Mr. Tanaka recognised the valuable contribution that civil society can make to the OECD policy-making process, noting that OECD workshops bring a larger cross-section of OECD stakeholders into policy debate. He further welcomed the participation of senior officials from Argentina, Brazil, and Chile on the agenda and the attendance of a number of participants from other non-member economies.

**Tony Sims**, Chair of the CCP, offered his welcome to the speakers and audience. He provided context to the discussions by providing background on the work of the Committee on Consumer Policy. That work includes the development of two sets of OECD Guidelines: one on consumer protection in e-commerce and the other focussed on protecting consumers from cross-border fraud. Both sets of Guidelines recognise that the role of dispute resolution and redress are fundamental.

Mr. Sims also introduced participants to “Carlos Consumer,” the star of the hypothetical examples that served as the subject of break-out discussions in Session 7. He concluded by emphasising the importance of workshops to the policy development process and encouraged all participants to contribute to the final panel discussion on next steps.

### *Keynote speeches*

**Deborah Platt Majoras**, Chairman of the US Federal Trade Commission (FTC), welcomed participants, thanking them for travelling to Washington. She observed that the workshop was about problem-solving, noting that solving consumer problems within a market-oriented framework is at the centre of the FTC’s consumer protection mission. She described the FTC’s role in providing information to consumers about how best to resolve their complaints about products or services directly with merchants. She further explained how the FTC solves problems by using law enforcement authority to obtain monetary redress for consumers, particularly in cases involving pervasive consumer fraud.

Chairman Majoras described how the ability of governments to obtain redress for victims of cross-border fraud is becoming increasingly important to maintain and increase consumer trust in the global marketplace. Recognising that different jurisdictions have different consumer protection systems and legal tools, she stressed her belief that national consumer protection agencies have a unique role to play in obtaining compensation for consumers who have been the victims of fraud. For example, she noted, between April 2004 and March 2005, the FTC obtained judgments ordering the return of more than USD 480 million in compensation to consumers. In addition, the FTC has over the years provided redress funds to consumers in more than 100 countries. She concluded by noting that improving the recognition and enforcement of appropriate restitutionary judgments obtained by consumer protection agencies against cross-border fraud would also make government redress actions more effective.

**Markos Kyprianou**, European Union Commissioner for Health and Consumer Protection thanked the OECD Committee on Consumer Policy and the US Federal Trade Commission for organising the event, which focused on a crucial aspect of consumer protection. He explained that the European Commission views effective enforcement of consumer legislation as a high priority. He stressed that consumer legislation can only deliver tangible positive effects for consumers if properly enforced.

Commissioner Kyprianou stated that increasingly integrated global markets require all market players to take a corresponding global approach towards enforcement and redress mechanisms. Enforcement must include a full spectrum of actions by all parties concerned: businesses, self-regulatory bodies, consumer organisations and public authorities, as well as the individual consumer. He noted that the European Commission has taken action in this regard in two principal ways. First, it has sought to tackle the “sharp end” of the spectrum of infringements involving cross-border fraud. The recently enacted Regulation on Consumer Protection Cooperation, for example, authorises national consumer protection enforcement authorities to take co-ordinated action to stop rogue traders targeting consumers across borders. Second, the European Commission has acted to improve the capacity of consumers themselves to seek redress. The European Consumer Centers Network (ECC—Net), provides a “one-stop” information and advice service to consumers. In addition, a series of Commission legislative actions and proposals aim to facilitate enforcement of ADR agreements and court decisions. He expressed his belief that the workshop would result in some interesting and new ideas to feed the debate on how to make the dispute resolution and redress systems work best for consumers.

### ***Session 1: Overview of dispute resolution and redress***

The introductory session provided an overview of the workshop topic, including discussion of the role of dispute resolution and redress in consumer protection policy; the role of business in resolving consumer disputes; and recent cross-border consumer complaint trends. Participants agreed that although consumer cases are usually small and do not affect norms nor modify market players' behaviour, when aggregated they can involve significant sums of money and have a widespread impact on consumer welfare.

The session began with a comprehensive examination of the different types of consumer dispute resolution mechanisms in place today. The speaker described these mechanisms in terms of a pyramid structure. At the bottom, where the largest number of disputes are resolved, are the two-party mechanisms where consumers and businesses communicate directly with each other without the intervention of any third party. Further up the pyramid are third party informal mechanisms such as negotiation and mediation, where consumers and businesses request the assistance of a neutral party to help them achieve a satisfactory outcome. Further up again are mechanisms such as ombudsmen schemes in which a neutral third party assesses the facts and arguments of both sides and recommends or imposes a solution. At the top of the pyramid, where only a fraction of consumer disputes end up, are the formal legal mechanisms such as courts and government enforcement authorities.

The speaker suggested that the above mechanisms could be broadly classified as aiming either to affect behaviour (a regulatory purpose) or to provide redress to consumers for harm suffered (a compensatory purpose). He pointed to differences in the role of public and private entities among the OECD countries, perhaps reflecting different cultural and legal traditions. For example, in the United States the class action procedure largely fulfils a compensatory role whereas in Europe the collective cases pursued by consumer organisations serve more of a regulatory purpose. Likewise, in the United States the government has powers to obtain monetary redress for consumers whereas in most European countries government bodies may only obtain conduct remedies. The speaker noted that on the whole, however, most national systems offer a broad range of different mechanisms which is necessary to respond to different types of disputes (*e.g.* individual versus collective; "legitimate" disputes versus fraud).

In terms of the role of business in resolving consumer disputes, there was consensus that good business practices and effective complaints handling procedures can resolve a large majority of disputes, to the benefit of both the consumer and business. One presentation examined the kinds of resolution mechanisms offered to consumers by payment card issuers and highlighted how these protections can be a good way to increase confidence in engaging in online and cross-border transactions. The speaker explained how marketplace competition has driven payment card companies, such as Visa, to voluntarily increase protections to consumers beyond the legal requirements.

Looking to recent trends in consumer complaints, there were two presentations based on statistics from [econsumer.gov](http://econsumer.gov) and the European Consumer Centre Network (ECC-Net). The [econsumer.gov](http://econsumer.gov) statistics revealed an overall rise in cross-border consumer complaints, with the highest numbers of complaints involving undelivered products. The presenter noted that a vast majority of these types of complaints were suitable for resolution either directly by the companies involved or through ADR. On the other hand, she also noted that a smaller but growing percentage of complaints involved unauthorised charges to consumers and other types of fraud which are not suitable for private dispute resolution mechanisms. One important way to address such complaints, she said, was to strengthen government agencies' ability to take enforcement action, including action to recover money for consumers.

The European statistics revealed quite similar trends with a steady increase each year in complaints involving cross-border ecommerce. Again, the largest category of complaints relate to defective delivery of products. There has also been a rise in the number of incidences of fraud affecting European consumers. The presenter noted that in addition to the increase in the number of cross-border complaints, they were

also becoming more complex with it often being difficult to identify the company the consumer had contracted with and where that company is located. Both presenters emphasised the value of collecting consumer complaints and maintaining adequate reporting systems in order to help identify trends and problem areas in the marketplace and also identify recipients for redress in certain cases.

Focusing on the individual consumer perspective, one of the panellists noted that while there are differences in the mechanisms on offer, commonalities can be identified in terms of the needs and expectations of consumers. She explained that consumers firstly do not want problems, but if they do have problems they want them resolved quickly, and finally that they do not want others to have the same problems. Another panellist stressed the need to ensure that consumers are aware of their rights and the different types of dispute resolution mechanisms that are available to them. Furthermore, he added, there is a need to increase confidence among consumers that these mechanisms are operating in a fair and appropriate manner.

### ***Session 2: Recent developments in the ADR marketplace***

This session examined recent developments in the ADR marketplace, including online ADR. Speakers and panellists discussed ways to foster the continued uptake of ADR by businesses and consumers, including through increased government support.

Participants pointed out that the availability of ADR is still patchy from country to country and among sectors. Furthermore, they noted, in the cross-border context, the challenges of locating a provider are significant. Apart from language difficulties, ADR services vary greatly from country to country (*e.g.* in terms of size, jurisdiction, and funding) which can leave consumers confused as to which type of body is appropriate to handle their dispute. Given these challenges, schemes such as ECC-Net and the International Directory of ADR Providers available on [econsumer.gov](http://econsumer.gov) that refer consumers to ADR bodies in other countries can play an important role. One speaker suggested establishing this kind of referral scheme on an OECD-wide basis.

Questions were raised about the funding of ADR. Although noting that in some areas (*e.g.* payment cards) marketplace competition has resulted in businesses offering stronger protection to consumers, many speakers believed that there was not a sufficient market for private sector business-to-consumer ADR without incentives or subsidies. One participant suggested that mandatory pre-resort to (non-binding) ADR might help create incentives, while noting that this could be controversial in some legal systems. Others emphasised the attachment of ADR to a trustmark or other self-regulatory scheme as offering the best prospects of financial viability and noted the role that governments could play in encouraging and providing financial support to the development of such schemes.

In terms of online dispute resolution (ODR), it was noted that there has been a significant increase in the availability of services, but that there is still room for improvement in this sector. One speaker suggested that reasons for the slow adoption of ODR include a reluctance among providers to adopt new technologies and new procedures in dispute resolution practices. In addition, she said, a low level of consumer awareness of the availability of ODR schemes and concerns about enforceability of outcomes has hindered development. She recommended that further work to develop ODR mechanisms should include support for standards development, improving the ability to handle cross-jurisdictional disputes, ensuring greater enforceability, and increasing awareness among businesses and consumers.

### ***Session 3: Small claims civil court proceedings and other government-run dispute resolution schemes***

This session examined state-run procedures (judicial and non-judicial) offering consumers simple ways to resolve their individual low-value disputes. The session included presentations on small claims

court procedures national consumer complaints boards, and on the adaptability of such mechanisms to cross-border cases.

With respect to small claims court procedures, much discussion focused on the monetary limits for using these procedures, which were considered too low in a number of countries. It was stated that consumers whose disputes involve sums over these financial limits are often left without recourse because of the cost and burden associated with taking a case to the regular court system. Speakers and panellists also discussed the role of lawyers in small claims courts. There was a general consensus that lawyers should not be permitted because consumers often cannot afford a lawyer giving the other represented party an unfair advantage. In addition, it was stated that in the ideal system the small claims procedure should be as simple as possible so that lawyers are not necessary. Other issues discussed included the difficulties associated with collecting judgments and the need for consumers to be advised of these difficulties. Too often, participants noted, consumers come to court without a clear idea of how the procedure actually works.

Using the presentation on the national consumer complaints board as a starting point, participants focused on the comparative advantages and disadvantages of government run alternative dispute resolution procedures. Participants noted that these types of ADR schemes often share many of the positive elements of courts in that they are independent and staffed by competent arbitrators (often legally trained and with specialised knowledge of consumer issues). In addition, such schemes are usually efficient at processing complaints, are either free or low-cost, and have simpler, less intimidating procedures than the courts. On the other hand, it was noted that government ADR bodies do not always have jurisdiction over all types of consumer disputes and, depending on the country, their decisions may not be legally binding.

Turning to discussion of cross-border cases, it was generally agreed that there are currently significant legal and practical obstacles to using small claims court procedures in such cases. Some suggested that judges should be sensitised to the needs of foreign consumers that are harmed by domestic “bad market actors”. Others highlighted a reluctance to adopt new technologies in the handling of cases which could greatly facilitate overseas claimants. One speaker discussed the key issues raised during recent attempts to develop a European procedure for small claims litigation across borders, which is the subject of a proposed European directive. He suggested that it could become a model for a global procedure.

Speakers and panellists concluded that there was an overall lack of consumer understanding and information about consumer dispute resolution. Furthermore, an audience member pointed to evidence suggesting that under-privileged consumers are less likely to be aware of their rights or to take (informal or formal legal) action to assert those rights. He questioned whether there was a way to improve access to justice for all and make dispute resolution procedures serve poorer and more vulnerable consumers as well as the middle classes.

#### ***Session 4: Collective claims: consumer plaintiffs and consumer associations***

This session examined procedures for collective action lawsuits by, or on behalf of, consumers. The session included presentations on collective action mechanisms in two different OECD countries – the United States and Japan; on procedures for consumer associations to take action on behalf of the “collective interest” of consumers; and on the compatibility of collective actions with the civil law tradition.

Speakers agreed that collective actions are a useful vehicle for consumer redress and can serve an important role in deterring bad practices by companies. However, some suggested that there was a potential for abuse in collective actions as well as the possibility of overburdening the legal system with complex cases involving large groups of claimants.

The presentations underscored the wide variety of approaches to collective action procedures. For example, in a number of countries, such as the US and Japanese models, it is consumers themselves that initiate the legal action. Whereas in other countries, mostly in Europe, it is consumer associations who initiate the action on behalf of consumers who have been harmed. In addition, there are differences in the remedies that can be obtained under different systems. In countries where consumer associations take the collective action, usually only injunctive relief may be obtained. In other countries a full range of remedies including monetary damages is available. There was a general consensus that the ability to obtain compensation for consumers is an important element of an effective system although one speaker noted that there can be problems relating to distribution and dilution of value when large numbers of consumers are involved. Other differences include the means of determining consumer participation in the action. Under the “traditional” US model, it is an opt-out system whereby all consumers who have been harmed are automatically included unless they take measures to exclude themselves. Under other newer models, only consumers that specifically “opt-in” are included in the group. A number of participants, including audience members, expressed a preference for an opt-out system on the grounds that opt-in is too burdensome and can limit uptake.

With respect to civil law countries the presenter observed that, to date, there has been a great reluctance to adopt collective action procedures on the grounds that they are incompatible with the civil law tradition. However, he suggested that this was a misconception. Noting the success of the collective action procedure in Brazil and the Canadian province of Quebec, he said that there was no reason to believe that such procedures can not work in civil law systems. He referenced a recent project that he had initiated to create a model class action law. The model law aims to provide a framework for the introduction of a collective action procedure for civil law countries taking into account the particular needs and characteristics of their legal systems.

The complexity of using collective action procedures in cross-border cases was also highlighted. One speaker observed that it can take years just to decide in what country the case should be heard. Another participant noted that apart from jurisdictional challenges, the differences among different countries’ collective action procedures make cross-border cases more difficult. He suggested working at the OECD level towards increased harmonisation of civil procedure laws to facilitate transnational collective actions in consumer cases.

Finally, it was noted that a number of OECD countries, including Finland, France, Korea and Norway, are considering proposals for new collective action procedures suggesting a convergence of opinion on the value of these mechanisms for consumer dispute resolution and redress.

### ***Session 5: Government facilitated redress***

This session focused on the role of government consumer protection enforcement agencies in facilitating consumer redress. It included presentations on the authority and experience of government agencies in the United States, Canada, Chile and Sweden in obtaining monetary redress for consumers.

Although not all OECD countries’ governments were represented at the workshop, the discussion suggested that a consensus may be emerging in favour of government facilitated redress. A number of countries have recently granted consumer agencies with some form of authority to obtain redress (*e.g.* Chile, Finland, Sweden) and others are considering doing so (*e.g.* Canada, United Kingdom). Participants stated that government-obtained monetary redress is an important complementary mechanism to other enforcement powers and an essential element of a comprehensive consumer protection framework. While injunctive relief may remedy future harms it does not compensate consumers for past wrongs they have suffered. Restitution, therefore, can serve as a vehicle to provide “complete justice” by providing consumers with compensation, restoring consumer confidence and depriving wrongdoers of ill-gotten gains.

The discussion also highlighted that there is no prescribed system for implementing government redress powers and that there are different ways to achieve the same goal. For example, government agencies may obtain compensation for consumer victims either by applying directly to the court for a restitution order, such as in the United States, or by initiating a class action, such as in Sweden.

In terms of cross-border cases, particularly those involving fraud, participants observed that government-obtained redress can play an important role. Governments have at their disposal investigative and enforcement powers which make them better situated than private individuals or groups to take action against fraudsters operating overseas. In this respect, the importance of effective co-operation among government agencies was stressed. One speaker suggested that proper implementation of the 2003 OECD Cross-Border Fraud Guidelines would greatly facilitate enforcement action in cross-border cases by providing national consumer protection agencies with the authority to share information and provide investigative assistance to their counterparts in other countries. The point was also made that national redress systems can be structured to provide compensation to foreign as well as domestic consumers. For example, it was noted that in the past five years the US Federal Trade Commission has distributed USD 7.3 million to more than 100 000 consumers in 116 countries outside the United States.

Some suggested that there may be tension between the government collecting consumer complaints to support enforcement actions and the need to avoid unrealistic consumer expectations of what the government can or will do to intervene on their behalf. Other challenges highlighted in the discussion included questions of how consumer redress could work within existing legal systems and how to set up the apparatus to make it work in practice.

#### ***Session 6: International judicial co-operation in cross-border cases***

This session focused on the impediments to legal action in cross-border cases. Speakers and panellists identified a number of significant challenges, including difficulties in obtaining evidence and enforcing judgments and collecting assets. They discussed how increased international judicial co-operation and harmonisation of procedural law could improve the effectiveness of consumer remedies in cross-border cases.

With respect to the enforcement of foreign monetary judgments, one speaker explained that outside the European Union, there were no multi-lateral arrangements to ensure the mutual recognition and enforcement of judgments. She recalled previous efforts at the Hague Conference on Private International Law to negotiate a comprehensive international convention in this area, but noted that the scope of the convention was now significantly narrowed and excluded consumer cases. On the other hand she noted that some countries do have bi-lateral agreements in this area and that others, such as the United States, are willing to enforce overseas judgments without requiring reciprocity.

There was discussion of the particular issues raised by the enforcement of judgments in consumer cases, as opposed to other civil cases. It was noted that, in general, courts will apply the same rules to consumer and non-consumer cases alike. However, there may be some difficulties with respect to judgments obtained by government agencies awarding monetary redress to consumers as they may be regarded as penal or revenue in nature or raise other public policy concerns. For this reason, participants said, it is important to stress the restitutionary nature of these judgments before foreign courts. As a positive development in this area, participants referred to the recent Free Trade Agreement between the United States and Australia which contains a provision stating that monetary judgments obtained by government authorities for the purposes of providing compensation to consumers should not be viewed as penal in nature.

In the public law field, one of the speakers explained how the US FTC works to recover overseas assets in cases where foreign defendants are targeting US-based consumers. He described the burdensome

procedures and serious legal obstacles to taking these types of cases. The most difficult cases, he said, are when the agency needs to obtain a pre-judgment asset freeze in order to ensure that there will be money left to fulfill the final judgment if successful. He stressed the need for increased cooperation in this area. In particular, he recommended the implementation of bi-lateral memoranda of understanding authorising government agencies to avail of civil procedures in other countries in order to seek redress for their residents. He also suggested that judicial education was needed to sensitise judges to the problems that foreign consumers face when targeted by cross-border fraud. Currently, he said, there is a tendency to weigh the interests of the local defendant more heavily than foreign consumers, to protect the former from “over-burdensome” regulation of their overseas activities.

There was a presentation on a joint project of the American Law Institute and the International Institute for the Unification of Private Law (UNIDROIT) to develop Principles of Transnational Civil Procedure. The speaker explained that the main purpose of the project is to overcome procedural differences among national legal systems in order to facilitate transnational civil litigation. The principles address a number of the issues and legal challenges raised by other participants, including the availability of provisional and protective measures and the recognition and enforcement of judgments. Although not intended to cover consumer disputes, the speaker suggested that with some changes the principles could also be useful to address some of the most difficult challenges to taking cross-border consumer cases.

Another speaker discussed some of the work on international judicial co-operation that has been carried out by the Organisation of American States (OAS). He pointed to a number of conventions in the private international law field that could be of relevance in cross-border consumer cases. One obvious drawback, he said, was that when dealing with low-value disputes individuals are unlikely to take formal legal action and rely on such conventions. However, the framework for judicial co-operation and assistance they put in place could greatly facilitate government agencies taking consumer protection cases across borders. The speaker also noted that there are new proposals to begin work at the OAS which is specifically focused on consumer cases.

#### ***Session 7: Break out discussion - case studies***

Workshop participants assembled into three “break out” groups to discuss hypothetical examples of consumer disputes in small groups (see Annex). They considered which forms of dispute resolution and redress would be available and appropriate given the circumstances of the dispute and identified the kinds of legal and practical obstacles the consumer may face.

#### ***Session 8: Wrap-up: next steps discussion***

Drawing on the discussion from the earlier sessions, session moderators drew conclusions on consumer dispute resolution and redress, identifying which mechanisms are working well and areas where further work is needed. Common themes included the importance of effective cross border dispute resolution to trust in global markets, the diversity of approaches around the world and the need to take account of differences in legal and cultural traditions, market practice and in the structure of local and regional economies.

In his concluding summary, the moderator of this session, and CCP chair Tony Sims brought together the various themes and suggestions that emerged over the two days, and particularly the final session. Looking at the different roles the CCP, the private sector, and individual governments can play, he summarised the various possibilities for future work.

*OECD Committee on Consumer Policy*

The Chair noted that a number of concrete suggestions for next steps by the OECD Committee on Consumer Policy had emerged from the discussion, including:

- Further collection and joint study of the evidence base for action.
- Choosing one or more particular mechanisms on which to do further in-depth work.
- Developing a framework on the elements of an effective dispute resolution and redress system.
- Perhaps including a comparative analysis of different approaches.
- Working towards an OECD Recommendation directed at member governments in relation to a framework.
- Using any of the above in the Committee's outreach efforts with non-OECD member economies.

Mr. Sims further recalled that other suggestions which were made at the workshop included: developing OECD norms for international class or group actions; studying best practice; more work on online or payment protections; developing an OECD-wide extra judicial network; and consumer surveys.

*Private sector*

The Chair reiterated that business has an important role of keeping customers satisfied and handling complaints effectively. Approximately 60-80% of consumer complaints, he said, could be resolved through direct consumer/business negotiation. He noted that the International Standards Organisation (ISO) has produced a world standard which could be relevant in this regard. For ADR and ODR providers and code owners, he stressed that the key was to provide quick, effective and user-friendly procedures which would enable consumers to pick from a range of systems according to their particular needs.

*OECD governments*

With respect to the work that could be done by individual governments, the Chair noted that possibilities discussed during the workshop included:

- Work on the demand side to ensure consumers were aware of their rights, had information about the marketplace and the methods of redress available.
- Provide signposts to ADR providers, industry schemes, Ombudsmen and judicial processes.
- Work to improve quality standards for ODR and ADR mechanisms and codes.
- Give seals of approval for such schemes which meet certain criteria (*e.g.* OFT's Codes Approval Scheme).
- Make their expectations clear to companies who trade across borders.
- Provide infrastructure arrangements, such as ECC-Net.
- Identify key principles of effective redress schemes (*e.g.* financial services ombudsmen) and consider whether they could be applied elsewhere.
- Form closer links between complaints recipients, policy officials and enforcers in order to rapidly respond to scams, etc.
- Improve access to justice, given its important backstop role, especially for the more vulnerable and excluded consumers.

- Examine whether they had effective redress systems, taking into account OECD member countries' diverse situations but also the need for international connectivity in order to combat cross-border scams and other redress shortfalls.

## ANNEX I

### OECD WORKSHOP ON CONSUMER DISPUTE RESOLUTION AND REDRESS IN THE GLOBAL MARKETPLACE

**US Federal Trade Commission  
Washington, DC  
19-20 April 2005**

#### AGENDA

This workshop is organised by the OECD and hosted by the US Government. The objective is to examine approaches to dispute resolution and redress mechanisms in OECD member countries and exchange views about the advantages and disadvantages of different approaches, particularly in the cross-border context. The workshop will take stock of new developments in industry-sponsored or voluntary dispute resolution and redress mechanisms; examine various court and other state-run procedures for the resolution of individual and collective low-value consumer disputes; discuss the role that consumer protection enforcement agencies can play in facilitating consumer redress; and consider ways to improve the effectiveness of consumer redress in cross-border cases.

The workshop begins with an introductory overview (Session 1), which will take a broad view of the variety of dispute resolution mechanisms in OECD countries and consider current consumer complaint trends. Participants will then consider each of these mechanisms in greater detail. Looking first to mechanisms that may be available to an individual consumer who has a dispute with a legitimate business, Session 2 will focus on private sector alternative dispute resolution, and session 3 on small claims courts and other state-run alternative dispute resolution schemes. Session 4 will examine different procedures for collective action lawsuits that may be available to groups of consumers with the same complaint. Session 5 will focus on government-obtained redress, a tool available in some countries to compensate consumer victims. This session will also consider what other roles government consumer protection agencies can play in facilitating consumer redress. Session 6 will examine the legal and practical impediments to ensuring that monetary judgments obtained in cross-border consumer cases ultimately result in compensation to consumers. This issue is common to all types of court-ordered redress for disputes with a cross-border dimension, but raises particular issues for government-obtained redress. Finally, building on the discussion in the foregoing sessions, sessions 7 and 8 will examine hypothetical examples of consumer disputes and draw conclusions on the state of consumer dispute resolution and redress in the global marketplace.

The **format** of the workshop will mix presentations, moderated panel discussions, and breakout group discussions. **Participation** will be open to the public, but will require advance registration and will be limited by available space. Interested journalists will be able to attend.

<b>DAY 1</b>	<b>Tuesday, 19 April 2005</b>
<b>08.15</b>	<b>REGISTRATION</b>
<b>09.00-9.10</b>	<b>WELCOME</b>
	<b>Mr. Nobuo Tanaka</b> , Director for Science, Technology and Industry, OECD <b>Mr. Tony Sims</b> , Chair, OECD Committee on Consumer Policy
<b>9.10-9.30</b>	<b>KEYNOTE SPEECHES</b>
	<b>Ms. Deborah Platt Majoras</b> , Chair, US Federal Trade Commission <b>Mr. Markos Kyprianou</b> , European Commissioner for Health and Consumer Protection
<b>9.30-10.45</b>	<b>SESSION 1: Overview of Dispute Resolution and Redress</b>
	<p>Moderator: <b>Mr. Martin Bond</b>, Assistant Director, Consumer and Competition Policy, Directorate, UK Department of Trade and Industry</p> <p>This introductory session will provide an overview of the workshop topic, including discussion of the role of redress in consumer protection policy; the role of business in resolving consumer disputes; and recent cross-border consumer complaint trends.</p> <p><b>Speaker 1:</b> The role of redress in consumer protection policy <b>Mr. Iain Ramsay</b>, Professor of Law, Osgoode Hall Law School, York University, Canada</p> <p><b>Speaker 2:</b> The role of business in resolving consumer disputes <b>Mr. Mark MacCarthy</b>, Senior Vice President, Public Policy, VISA USA</p> <p><b>Speaker 3:</b> Cross-border complaint trends from econsumer.gov <b>Ms. Lois Greisman</b>, Associate Director, Planning and Information Division, US Federal Trade Commission</p> <p><b>Speaker 4:</b> Cross-border consumer complaint trends in Europe <b>Mr. Fredrik Nordquist</b>, Legal Adviser, European Consumer Centre, Sweden</p> <p><b>Moderated panel discussion</b> among the speakers above and panellists below</p> <p><b>Panellist 1:</b> <b>Mr. Michael Jenkin</b>, Director General, Office of Consumer Affairs, Industry Canada</p> <p><b>Panellist 2:</b> <b>Ms. Susan Grant</b>, Vice President for Public Policy, US National Consumers League; US Co-Chair, Internet Working Group, Trans Atlantic Consumer Dialogue (TACD)</p> <p>Issues for discussion</p> <ul style="list-style-type: none"> <li>• What are the major trends in consumer complaints? How big is the cross-border redress problem?</li> <li>• How do the various redress systems work together (or not), and what are their comparative benefits?</li> <li>• What are the essential elements of an effective internal complaints handling process? What practical steps can businesses take in this area?</li> <li>• How can consumer awareness of dispute resolution and redress mechanisms be raised so as to increase trust and confidence in the global marketplace?</li> </ul>
<b>10.45-11.00</b>	<b>Break</b>

11.00-12.45	<p><b>SESSION 2: RECENT DEVELOPMENTS IN THE ADR MARKETPLACE</b></p> <p><b>Moderator:</b> <b>Mr. Scott Cooper</b>, Manager, Technology Policy, Hewlett Packard</p> <p>This session will take stock of recent developments in the ADR marketplace. Speakers and panellists will discuss ways to foster continued uptake by businesses and consumers and examine the role of government in encouraging, mandating, or financially supporting private-sector ADR schemes.</p> <p><b>Speaker 1:</b> ADR and new technology <b>Ms. Melissa Conley Tyler</b>, Program Manager, International Conflict Resolution Centre, University of Melbourne, Australia; Member, UN Expert Group on ODR</p> <p><b>Speaker 2:</b> Linking ADR to trustmark programmes <b>Mr. Steve Cole</b>, Senior Vice President and General Council, Council of Better Business Bureaus</p> <p><b>Speaker 3:</b> Facilitated complaints handling <b>Mr. Alastair Tempest</b>, Director General, Federation of European Direct &amp; Interactive Marketing (FEDMA)</p> <p><b>Speaker 4:</b> ADR referral and the European extrajudicial network <b>Mr. Christian Moritz</b>, Project Leader, European Consumer Centre, Germany</p> <p><b>Speaker 5:</b> Government support for private ADR schemes <b>Ms. Isabel Mendes Cabecadas</b>, President of Board of Directors, Arbitration Centre for Consumer Conflicts, Portugal</p> <p><b>Moderated panel discussion</b> among the speakers above</p> <p><b>Panellist 1:</b> <b>Ms. Andrea Da Silva</b>, Senior Analyst, Office of Technology &amp; E-Commerce, US Department of Commerce</p> <p><b>Panellist 2:</b> <b>Mr. Steve Brooker</b>, Senior Policy Officer, National Consumer Council, United Kingdom</p> <p>Issues for discussion</p> <ul style="list-style-type: none"> <li>• Is there a viable business model for private sector business to consumer ADR?</li> <li>• What are the benefits of regional and international ADR referral programs such as EEJ-net, econsumer.gov and those provided by the private sector?</li> <li>• What is the role of government in ADR, in particular in online dispute resolution (ODR)? Is there a need for internationally agreed principles for business to consumer ADR?</li> </ul>
12.45-2.15	<b>Lunch</b>

2.15-3.30	<p><b>SESSION 3: SMALL CLAIMS CIVIL COURT PROCEDURES AND OTHER GOVERNMENT-RUN DISPUTE RESOLUTION SCHEMES</b></p> <p><b>Moderator:</b> Ms. <b>Benedicte Federspiel</b>, Danish Consumer Council; Steering Committee, TACD</p> <p>This session will examine simplified court procedures for small claims and other state-run dispute resolution mechanisms such as consumer complaints boards, ombudsman schemes, and arbitration tribunals.</p> <p><b>Speaker 1:</b> Small claims in civil court proceedings  <b>Ms. Susan Bowler</b>, Senior Analyst, Ministry of Consumer Affairs, New Zealand</p> <p><b>Speaker 2:</b> National consumer complaints board  <b>Mr. Lars Grøndal</b>, Advisor, Norwegian Consumer Council</p> <p><b>Speaker 3:</b> Cross-border small claims litigation  <b>Mr. John Stacey</b>, Head of Civil Business Branch, UK Department of Constitutional Affairs</p> <p><b>Moderated panel discussion</b> among the speakers above and panellists below</p> <p><b>Panellist 1:</b> Ms. <b>Patricia Vaca Narvaja</b>, Assistant Secretary for Competition and Consumer Protection, Argentina</p> <p><b>Panellist 2:</b> Mr. <b>Thomas Gordon</b>, Senior Counsel, HALT - An Organization of Americans for Legal Reform</p> <p>Issues for discussion</p> <ul style="list-style-type: none"> <li>• What are the comparative advantages of court-based versus other government-funded schemes for the resolution of small claims?</li> <li>• What are the legal and practical limitations of these mechanisms for cross-border cases?</li> <li>• Are small claims procedures adaptable to the online environment?</li> </ul>
3.30-3.45	<b>Break</b>

3.45-5.30	<p><b>SESSION 4: COLLECTIVE CLAIMS: CONSUMER PLAINTIFFS AND CONSUMER ASSOCIATIONS</b></p> <p><b>Moderator:</b> Ms. Isabelle Rouveure, European Commission, DG SANCO</p> <p>This session will cover two main categories of collective actions. The first category, commonly referred to as class, collective, or group actions, involves an action by a consumer or consumers on behalf of a group of similarly situated persons. The second category are actions taken by consumer associations to protect the collective interests of consumers.</p> <p><b>Speaker 1:</b> Collective claims in civil law countries  <b>Mr. Antonio Gidi</b>, Assistant Professor, University of Houston Law Center, United States</p> <p><b>Speaker 2:</b> The US class action lawsuit  <b>Mr. Robert Klonoff</b>, Professor of Law, University of Missouri-Kansas City School of Law, United States</p> <p><b>Speaker 3:</b> Collective claims in Japan  <b>Mr. Yutaka Yamamoto</b>, Professor of Law, Graduate School of Law, Kyoto University, Japan</p> <p><b>Speaker 4:</b> Collective claims by consumer associations  <b>Mr. Patrick von Braunmuehl</b>, Deputy Executive Director, Federation of German Consumer Organisations; EU Co-Chair, Internet Working Group, TACD</p> <p><b>Moderated panel discussion</b> among the speakers above and panellists below</p> <p><b>Panellist 1:</b> <b>Mr. André Longuet des Diguères</b>, Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes, France</p> <p><b>Panellist 2:</b> <b>Mr. Ricardo Morishita Wada</b>, Director, Consumer Protection Department, Ministry of Justice, Brazil</p> <p>Issues for discussion</p> <ul style="list-style-type: none"> <li>• What are the advantages and disadvantages of different models of collective action?</li> <li>• What types of remedies are commonly available?</li> <li>• What are the legal and practical difficulties in cross-border cases?</li> <li>• What is the role of government vis a vis both types of action?</li> </ul>
6.00-8.00	<p><b>Cocktail Reception at the Canadian Embassy</b> (Canada Room)  501 Pennsylvania Ave., NW, Washington, D.C.</p>

<b>DAY 2</b>	<b>Wednesday, 20 April 2005</b>
<b>9.00-9.10</b>	<p><b>WELCOME</b></p> <p><b>Mr. Orson Swindle</b>, Commissioner, US Federal Trade Commission</p>
<b>9.10-11.00</b>	<p><b>SESSION 5: GOVERNMENT FACILITATED REDRESS</b></p> <p><b>Moderator:</b> <b>Mr. Ian Edwards</b>, Presidency, International Consumer Protection and Enforcement Network (ICPEN)</p> <p>This session will focus on the role of government consumer protection enforcement agencies in facilitating consumer redress. It will examine the authority and experience of agencies in obtaining monetary redress for consumers, with a particular focus on cross-border cases. It will also look at the role of international co-operation among enforcement authorities in facilitating action in cross-border cases.</p> <p><b>Speaker 1:</b> Authority and experience in obtaining redress on behalf of consumers <b>Ms. Stacy Feuer</b>, Legal Advisor, International Consumer Protection, US Federal Trade Commission</p> <p><b>Speaker 2:</b> Existing and proposed powers to obtain redress <b>Ms. Andrea Rosen</b>, Assistant Deputy Commissioner, Competition Bureau, Canada</p> <p><b>Speaker 3:</b> Obtaining monetary equitable relief for groups of consumers <b>Mr. José Roa Ramirez</b>, Director, National Consumer Service (SERNAC), Chile</p> <p><b>Speaker 4:</b> Obtaining redress through collective action proceedings <b>Ms. Marianne Åbyhammar</b>, Deputy Consumer Ombudsman, Sweden</p> <p><b>Moderated panel discussion</b> among the speakers above and panellists below</p> <p><b>Panellist 1:</b> <b>Ms. Jean Ann Fox</b>, Director of Consumer Protection, Consumer Federation of America; Steering Committee, TACD</p> <p><b>Panellist 2:</b> <b>Ms. Min-Young Huh</b>, Manager, International Cooperation, Korea Consumer Protection Board</p> <p>Issues for discussion</p> <ul style="list-style-type: none"> <li>• What are the various ways a government consumer protection agency may obtain compensation for consumer victims (<i>e.g.</i> direct orders for redress, representative claims, restitution as part of settlements)?</li> <li>• What are the various ways (<i>e.g.</i> new legislation, interpretation of existing case law or legislation) that a consumer protection agency can acquire the legal authority to obtain monetary redress in consumer protection matters?</li> <li>• How can money be returned to consumers? What are the logistics of redress administration?</li> <li>• What are the legal and practical obstacles to consumer protection agencies obtaining redress in cross-border cases?</li> <li>• What other ways can consumer protection agencies facilitate consumer redress?</li> </ul>
<b>11.00-11.15</b>	<b>Break</b>

<b>11.15-1.00</b>	<b>SESSION 6: INTERNATIONAL JUDICIAL CO-OPERATION IN CROSS-BORDER CASES</b>
	<p><b>Moderator:</b> <b>Mr. Hugh Stevenson</b>, Associate Director, International Consumer Protection, US Federal Trade Commission</p> <p>This session will focus on the legal and practical impediments to recovering overseas assets and enforcing foreign monetary judgments and discuss how increased international judicial co-operation in this area could improve the effectiveness of consumer remedies in cross-border cases. Discussion will focus on: the ability to obtain orders from a foreign court to freeze or repatriate overseas business assets; and international arrangements for recognition and enforcement of foreign monetary judgments, including orders for consumer redress obtained by government agencies.</p> <p><b>Speaker 1:</b> Recognition and enforcement of foreign monetary judgments <b>Ms. Louise Ellen Teitz</b>, Professor of Law, Roger Williams University, School of Law, United States</p> <p><b>Speaker 2:</b> Recovering overseas assets: asset freezes and repatriation <b>Mr. Jonathan Welch</b>, Trial Attorney, Office of Foreign Litigation, US Department of Justice</p> <p><b>Speaker 3:</b> Draft Principles and Rules of Transnational Civil Procedure: a joint initiative of the American Law Institute and UNIDROIT <b>Mr. Michele Taruffo</b>, Professor of Law, University of Pavia, Italy</p> <p><b>Speaker 4:</b> Work at the Organisation of American States (OAS) on International Judicial Co-operation <b>Mr. John Wilson</b>, Legal Adviser, Private International Law, Department of Legal Services, OAS</p> <p><b>Moderated panel discussion</b> among the speakers above and panellists below</p> <p><b>Panellist 1:</b> <b>Ms. Cornelia Kutterer</b>, Senior Legal Advisor, BEUC - The European Consumers' Organisation, Belgium</p> <p><b>Panellist 2:</b> <b>Mr. Eric L. Lewis</b>, Partner, Baach Robinson &amp; Lewis PLLC, United States</p> <p>Issues for discussion</p> <ul style="list-style-type: none"> <li>• What are the main legal limitations to obtaining asset freezes or repatriation orders from a foreign court?</li> <li>• What particular legal obstacles do government consumer protection agencies face in enforcing orders for consumer redress in a foreign court?</li> <li>• What efforts are being taken at the bilateral, regional, and multilateral level to address the above challenges?</li> </ul>
<b>1.00-2.30</b>	<b>Lunch</b>

<b>2.30-3.45</b>	<p><b>SESSION 7: BREAK OUT DISCUSSION — CASE STUDIES</b></p> <p><b>Moderator:</b> Ms. Carmel Foley, Director of Consumer Affairs, Ireland</p> <p>In this break-out session, workshop participants will be invited to discuss two hypothetical examples (see Annex) of consumer disputes in small groups. They will consider what forms of dispute resolution and redress would be available and appropriate given the circumstances of the dispute and identify any potential legal and practical obstacles the consumer may face.</p>
<b>3.45-4.15</b>	<b>Break</b>
<b>4.15-5.15</b>	<p><b>SESSION 8: WRAP-UP: NEXT STEPS DISCUSSION</b></p>
	<p><b>Moderator:</b> Mr. Tony Sims, Chair, OECD Committee on Consumer Policy</p> <p>Drawing on the discussion from the earlier sessions, session moderators will be asked to draw conclusions on consumer dispute resolution and redress in the global marketplace, identifying which mechanisms are working well and areas where further work is needed.</p> <p><b>Session 1 Moderator:</b> Mr. Martin Bond  <b>Session 2 Moderator:</b> Mr. Scott Cooper  <b>Session 3 Moderator:</b> Ms. Benedicte Federspiel  <b>Session 4 Moderator:</b> Ms. Isabelle Rouveure  <b>Session 5 Moderator:</b> Mr. Ian Edwards  <b>Session 6 Moderator:</b> Mr. Hugh Stevenson  <b>Session 7 Moderator:</b> Ms. Carmel Foley</p>
<b>5.15</b>	<b>CLOSING</b>

**ANNEX II**  
**HYPOTHETICAL CASE STUDIES (FROM SESSION 7)**

Carlos Consumer is a resident of Consumerland. He buys a “five-star holiday package” on line from valuevacations.com. The package is advertised as including “luxury accommodations” and “all meals and drinks.” The price of the package is EUR 1000.

**Assume the holiday turns out to include substandard accommodations. The meals provided are at a local fast-food restaurant, with only soft drinks included.**

1. Carlos would like at least a partial refund of the holiday purchase price. What are his best options in terms of efficiency and cost-effectiveness? Does it make a difference if valuevacations.com is located in another country?
2. Carlos would like at least a partial refund of the holiday purchase price. A number of other consumers were also unsatisfied with the holiday package and are demanding refunds. What options are available to Carlos and the other consumers? Does it make a difference if valuevacations.com or some of the consumers involved are located in another country?

**Assume that Carlos never receives a confirmation for his purchase or his holiday tickets. When he returns to valuevacations.com, the Web site has disappeared and he has no other information about the company. His payment card has been charged EUR 1000.**

3. Carlos would like a full refund. What are the best options for Carlos in terms of efficiency and cost-effectiveness? Does it make a difference if valuevacations.com turns out to be located in another country?
4. Assume there are a large number of consumers who have been harmed in this way. What are some of the available options? Does it make a difference if valuevacations.com or some of the consumers involved turn out to be located in another country?

**In General:**

5. Which dispute resolution and redress mechanisms would be best to deter valuevacations.com or other similar companies from acting like this again?
6. What are the most serious obstacles to obtaining redress for Carlos? As policy makers, what recommendations should we make in these areas?

## ANNEX III

OECD WORKSHOP ON DISPUTE RESOLUTION AND REDRESS IN THE GLOBAL  
MARKETPLACE: LIST OF PARTICIPANTS

<b>Ms. Sarah ANDREWS</b> Administrator for Consumer Policy	OECD FRANCE
<b>Mr. Jeffrey BARBER</b> Executive Director	Integrative Strategies Forum UNITED STATES
<b>Ms. Hilde Merethe BERG</b>	Ministry of Children and Family Affairs NORWAY
<b>Mr. Ted BLACK</b> Consultant	STEN Information Resources UNITED STATES
<b>Mr. Martin BOND</b> Assistant Director	Department of Trade and Industry UNITED KINGDOM
<b>Mr. Owen BONHEIMER</b> Associate	Miller & Chevalier UNITED STATES
<b>Mr. Christian BOULIANNE</b> Competition Law Officer	Competition Bureau Canada CANADA
<b>Mr. Darren BOWIE</b> Assistant General Counsel	America Online Linc UNITED STATES
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